

State of Utah

Title and Escrow Commission Meeting

Meeting Information

Date: **February 11, 2008**

Time: **9:30am**

Place: Backman Title
167 E. 6100 S., Ste 250

Members

Commission Members

Chair, Glen W. Roberts, *Utah Cnty*

David M. Lattin, *Salt Lake Cnty*

Canyon W. Anderson, *Davis Cnty*

Garry M. Goodsell, *Iron Cnty*

Jerry M. Houghton, *Tooele Cnty*

Department Staff

John E. "Mickey" Braun, Jr.
Ass't Commissioner

Perri Babalis
AG Legal Counsel

Darrel Powell
Dir. Market Conduct

Mark Kleinfield
Admin. Law Judge

Gerri Jones
MC Examiner

Sheila Curtis
MC Examiner

Jilene Whitby
PIO/Recorder

MINUTES

- I. **Welcome and Introductions** / Glen Roberts, Chair
Glen began the meeting at 9:30am.
- II. **Adoption of Minutes of Previous Meeting**
Canyon made a **motion** to accept the minutes without change, David seconded it and the vote was unanimous.
- III. **Review & Concur with Licensee Report**
Jerry asked what the requirements were for license reinstatement? Staff and David Moore responded that an individual could reinstate within one year of renewal by paying the late fee and license fee. After a year they are required to retake the license exam as well as pay the fees. Mickey said that if an agency's license lapses for more than a year they must obtain a new license, meet the owner/management requirements in 31A-23a-204(1)(a) and pay the late and license fees. Canyon made a **motion** to concur with the report, Garry seconded it and the vote was unanimous.
- IV. **Number of Cases Open & Closed**
 - Glen asked how a complaint is closed? Staff said it could be closed as a consumer complaint then opened as a market conduct investigation, or it could be closed as a consumer complaint due to lack of information. The Consumer Complaint report is new. The department receives very few of these. Most of the complaints come from licensees. These complaints are handled as market conduct investigations. Canyon proposed that staff only show closed cases on the report for one year. All agreed.
 - Some fraud cases are being worked on at the same time by the department and the Fraud Division.
 - Jerry asked what would happen to Gerri's cases after she retires in May? Staff said notes are being made during the investigation process. These notes help anyone picking up the file to know what has been done and what the issues are. She is working now to complete as many of her cases as possible before leaving. Those that cannot be completed before she leaves are being assigned out.

- Canyon asked how these reports could be best used? Mickey said they hold the department's feet to the fire and gauge our progress. The department's problem is manpower. The department is tracking their investigations to see how many are closed in 75 days. The department's goal is to close consumer complaints within 60 days. Garry asked for a status report on about 15 cases that were over two years old. Mickey said they would.

V. **Review & Concur with Enforcement Case Report for January**

Mark presented a stipulation against Empire Land Title to the Commission for their review. They acted as a title and escrow agent, charging a person the reissue rate rather than the regular rate. He proposed a forfeiture of \$5,000. Mickey said there was no apparent profit from the violation. Some concern was expressed that the fee may not be high enough to stop this violation from occurring again. The term "Profit" needs to be eliminated or defined. Mickey said the department could subcontract an audit to determine how much business was gained from the transaction, but it would be expensive and hard to do. The highest fine we can charge is \$5,000 along with a forfeiture in the amount of double the profit. Elimination of the word "profit" in the code would require a legislative change. It can be defined by rule though. Canyon made a **motion** to concur with the report, David seconded it and the vote was unanimous. Glen then signed the Order.

VI. **Old Business**

- **Review Draft Changes to R590-153, *Unfair Inducements...* / Perri**
 - o (3)(G) The Commission decided to change the term "simultaneous transaction" to "Flip." Glen asked Perri to create wording to define it. Include that it refers to one piece of property and explain the flow of money as it does in Bulletin 2007-5.
 - o (3)(E) Canyon thought it needed to be clearer that services were "escrow services." Take out closing. Insert "escrow" before services.
 - o (4)(J) Canyon asked if it was a violation for a producer to put a desk in a client's office and pay rent? Glen said this applied regardless of whether rent is paid
 - o (4)(R) Farm Packet. Perri said she researched the question of whether or not the elimination of this subsection would be a RESPA violation? It will not mainly because the RESPA law is so broad that it will allow the Commission to define what the violations are. Garry was concerned that eliminating (R) would open the door to issues about information that a title company can offer. Glen said other sections of the rule provide restrictions. Perri did not know of any of our laws or rules that violated RESPA. Sheila said she had received only one call regarding this matter since she started work at the department. David suggested addressing information distributed by third parties. David Moore suggested wording to the effect that information offered by the third party or anything offered by the third party for profit would have to be charged for. The Commission decided to leave the old wording in (R) crossed out.
 - o (5)(V) Al Newman asked that a 1031 or title company be allowed to have a booth at seminars or conventions. They would provide educational information and have a person to answer questions. He could not see that it would be different than advertising in a title magazine. Glen said ULTA does it. Al said that his title employees work for both the title agency and the exchange. The Commission did not think this situation was in violation of the rule as long as the sign provided the name of the agency OR the exchange - not both. This would require a change in (5)(A)(2) to allow for advertisement in official trade associations as well as their publications.

- o Perri said that those things not specifically prohibited by the rule were permissible. This rule is client related only and does not deal with associations.
- o (5)(E) Sandra asked if business cards were considered a novelty gift? No. Everyone agreed they were self-promotional but not a novelty gift. Should edible gifts be included here? The Commission decided it should not.
- o (5) The introductory paragraph should read: "Except as specifically prohibited above, the following are permitted."
- o (5)(G) By statute the Commission can approve CE classes. Currently the department does this automatically with all of the other insurance classes. Mickey said that to separate title classes from the others would make the process more labor intensive and complicated. The Commission decided to **write a rule delegating this process to the department**. It could contain similar language as that in R592-2. **Mickey will see if a list can be created showing the classes requesting CE credit that could then be reviewed and approved by the Commission.**
- o (5)(G)(4) The Commission agreed that non-CE classes could be provided as often as desired as long as food was not provided to participants by the title agent. Leave the language in the rule as is.
- o Perri will make necessary changes to the rule and forward to Jilene by Wednesday to forward to the Commission for their approval. If they return in a timely manner Jilene can file the rule for rulemaking before the end of day on Friday the 15th.
- **DEFER TO MARCH MEETING** - Draft Rule for Exemption from the 3-year Licensure/Experience Requirement / Mickey & Clayton

VII. **New Business**

- **DEFER TO MARCH MEETING** - "Transaction" Definition 31A-23A-406(1)
- **DEFER TO MARCH MEETING** - Define "Profit" / Canyon

VIII. **Other Business** from Committee Members

IX. **Adjourned:** At 12:11pm Canyon made a motion to adjourn and Gerri seconded it.

X. **Next Meeting** March 10, 2008, 9a.m.

2008 Meetings

Mar 10, Beehive Rm	Aug 11, Beehive Rm
Apr 14, Beehive Rm	Sept 8, Beehive Rm
May 12, Beehive Rm	Oct 8, Beehive Rm
June 9, Beehive Rm	Nov 10, Beehive Rm
July 16, Beehive Rm	Dec 8, Beehive Rm